



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill
Rebekah Lacey Ivria Glass Fried Eric Reustle Blake M. Mensing Katherine E. Stock

January 24, 2018

VIA FIRST CLASS MAIL AND EMAIL

M. Kathryn Sedor, Presiding Officer
Energy Facilities Siting Board
One South Station
Boston, MA 02110

Re: NSTAR Electric Company d/b/a Eversource Energy,
EFSB 16-02/D.P.U. 16-77

Dear Ms. Sedor

On behalf of the Town of Needham, enclosed for filing are the Town of Needham's Response to Opposition of NSTAR Electric Company d/b/a Eversource Energy to the Town's Motion to Reopen Hearing and Certificate of Service. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric B. Reustle', with a stylized flourish at the end.

Eric B. Reustle

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

Petition of NSTAR Electric Company d/b/a/
Eversource Energy for Approval to Construct
and Maintain a New 115-kV Combination
Overhead/Underground Transmission Line in
West Roxbury, Dedham and Needham
Pursuant to G.L. c. 164 § 69J

EFSB 16-02/D.P.U. 16-77

**TOWN OF NEEDHAM'S RESPONSE TO
OPPOSITION OF NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY
TO THE TOWN'S MOTION TO REOPEN HEARING**

I. INTRODUCTION

On January 11, 2017, the Town of Needham submitted its Motion to Reopen Hearing, requesting that the Energy Facilities Siting Board (the "Siting Board") reopen evidentiary hearings in this matter for certain limited purposes. On January 18, 2018, NSTAR Electric Company d/b/a Eversource Energy ("Eversource" or "the Company") filed its Opposition to the Town's motion. That Opposition, however, highlights the need for further evidentiary hearings, misrepresents the Town's positions in important respects, and admits that Eversource has not complied with the Siting Board's Record Request RR-EFSB-14. For the reasons set forth below, the Town's Motion to Reopen should be allowed.

II. ARGUMENT

A. Eversource Has Not Complied with RR-EFSB-14.

IN RR-EFSB-14, the Siting Board instructed Eversource to describe the material changes, if any, between the 75% design plans and the 100% design plans and "[i]f the design status is not 100 percent complete, indicate the percentage of completeness." In its

response to RR-EFSB-14, Eversource states that “[t]he 100 percent design drawings for the underground portion of the Project along the Noticed Alternative Route have been completed on schedule.” Eversource did not indicate that its plans were incomplete in any way or indicate the percentage of completeness; it explicitly claimed that the plans were 100% complete. RR-EFSB-14.

In its Opposition, however, Eversource now claims otherwise—namely that it was unable to complete the design plans on time¹ and that “[t]he Company expects to have updated plans completed by January 31, 2018.” Opposition, pp.3-4. Unless design plans can be more than 100% complete, Eversource has, by its own admission, failed to comply with the Siting Board’s record request and knowingly filed a false statement with the Siting Board.

B. Eversource Has Failed to Incorporate the Town’s Reasonable Requests for Plan Modifications into Its Submissions to the Siting Board.

Eversource representatives met with the Town Engineer and DPW Director on one occasion each following the submission of Eversource’s 30% and 75% design plans. The 30% design plans consisted of two-dimensional drawings from which the Town Engineer could make no determinations regarding conflicts with Town utilities. The 75% design plans included three-dimensional drawings, but lacked accurate location information related to Town utilities.

¹ Eversource alleges that it could not have incorporated the utility location data into finalized design plans on time because it did not receive such information until December 21, 2017. Opposition, pp.3-4. The Engineering Department notes that this was, in fact, the second time this information was provided to Eversource.

Regardless of when Eversource received the information, however, Eversource knew that such information was necessary for the design plans and delayed asking for this information until the last minute. Eversource should not be allowed to evade review of its design plans through its own unnecessary delay.

Under these circumstances, the Town Engineer requested changes to the design plans based on the limited information being provided by Eversource with the expectation that Eversource would either incorporate those changes or explain why such changes could not be made. In its submission to the Board, however, Eversource, has instead labelled those requests as not material, unreasonable or inconsistent with Siting Board standards without any explanation or evidence.²

C. As Proposed, the Project Conflicts with the Town's Water and Sewer Mains.

In its Opposition, Eversource states that it is not aware of a conflict with a sewer main and that it believes the Town's references to conflicts with the sewer main should instead refer to sewer services.

The Town did not misstate the nature of the conflict. The Town's Engineering Department has clearly shown that the duct bank, if installed at the proposed depth, will conflict with the Town's water and sewer main in certain locations. See, e.g., Town of Needham's Motion to Reopen, Exhibit A, Drawing 11 of 40 (identifying an inaccurate sewer main location reflected on Eversource's plans, noting the correct location of the sewer main and instructing Eversource to re-route the duct bank accordingly). Eversource has, thus far, not suggested a resolution to this conflict or even updated its design plans to acknowledge the conflict.

In the December 14 meeting with Eversource representatives, the Town Engineer additionally stated that a conflict also exists in places where the sewer main runs at an angle to the duct bank and the designs call for the duct bank to be installed above the sewer

² Eversource contradictorily asserts that the Town's requested changes both: (1) do not meet the Siting Board's standards; and (2) are not material. See Opposition, pp.3-4, 5. If the requested changes are not material changes to the design plans, which the Company asserts satisfies the Siting Board's standards, it cannot logically follow that the changes conflict with the Siting Board's standards.

main. In his judgment, such positioning can undermine the integrity of the duct bank if work is required on the sewer main where they cross. This concern can potentially be addressed by repositioning the sewer main or the duct bank so that they are parallel and the duct bank is as low or lower than the sewer main. Because the sewer main is a gravity-based system, however, the duct bank must be carefully located and any relocated sewer main designed so as to maintain the sewer main's proper function.

In its submissions to the Siting Board, Eversource has failed even to acknowledge the Town's concerns regarding such conflicts. These conflicts affect the location, design, and cost of installing the duct bank and, as such, are obviously material to the constructability of the design plans and, therefore, to the application of the Siting Board's standards to this project.

D. Eversource has Failed to Provide an Evidentiary Basis for its Argument that EMF Levels are Safe at the Shallowest Proposed Depth.

In its Motion, the Town identified a portion of the route where the duct bank is proposed to be 0.9 feet below grade. See Motion to Reopen, Exhibit A, Drawing No. 18 of 40. Contrary to Eversource's assertion, the placement of the duct bank in this location within the pavement area along South Street does not have any significant wetlands implications, and the Town's Conservation Commission has not expressed an opinion regarding the location of the duct bank. To be sure, Eversource presented a drawing to the Conservation Commission at a public hearing held on January 11, 2018, at which no one immediately objected to the location of a culvert crossing. This is a far cry, however, from the Conservation Commission's having "indicated its preference for the duct bank to be located above the culverts at this location," as the Company claims (Opposition at p.7, n.4). Neither the Conservation Commission nor the Town as a whole has taken a position as to how the duct bank should be installed at this location, or what mitigation measures are

appropriate to offset the proposed shallow placement of the duct bank at the culverts.³

Rather, it is the Town's position that the EMF modeling submitted by Eversource does not provide any predictions regarding EMF levels above the project at depths of less than 3.5 feet to the transmission line.

There is simply nothing in the evidentiary record to support Eversource's argument that the increase in EMF levels resulting from the shallow placement of the duct bank would be "*de minimis*" (Opposition, p.7). Specifically, Eversource argues that the Siting Board may conclude that, because the EMF modeling shows that EMF levels decrease with distance, the reduced depth will not have a significant impact. This argument, however, misrepresents the modeling provided by Eversource in this proceeding. Eversource's modeling demonstrates predicted EMF values at various distances lateral to the transmission line, and predicts EMF levels based on the assumption that the transmission line will be a minimum of 3.5 feet underground. Exh. EV-3, pp.8-9, 15 ("The graphs in Figures 3.6 and 3.7 plot the magnetic field *versus* horizontal distance from centerline.... Both graphs show that magnetic field values decrease rapidly with lateral distance from the lines."). There is, nothing in the record that predicts EMF levels if the assumed depth is reduced.

Simply put, Eversource submitted modeling that assumed a shallowest possible depth. That assumption is unambiguously false with respect to one portion of the project. There is no evidence in the record from which the Siting Board or Town can predict the EMF levels at this location if the duct bank is installed at the proposed depth of 0.9 feet. If, on the other hand, the duct bank is installed beneath the culverts, the cost of installation presumably may be increased. The record does not indicate anything about the magnitude

³ Indeed, the Conservation Commission's hearings on Eversource's wetlands Notice of Intent are ongoing.

of that increase, if any. Evidence regarding EMF levels and the cost of installation under the culverts, therefore, is demonstrably relevant and material to the Siting Board's determination. Yet there is not a single shred of evidence in the record as it is presently constituted.

E. It Is Necessary to Reopen the Hearing.

Based on the foregoing, the Town submits that it is necessary to reopen the hearing in this matter to allow further discovery, witness examination and, as necessary, supplemental briefing regarding the completed design plans so that the Siting Board can resolve the factual errors in the Company's submission, review and consider the need for modifications to the plans submitted, take further evidence regarding the actual plans that the Board is being asked to review, and make an informed determination of whether the project, as it will necessarily actually be built, provides "a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost," as required by *M.G.L. c.164, §69H*.

In response to the Town's motion, Eversource argues that "the level of detail and information that the Town is requesting to be before the Siting Board is far more granular and particularized than the agency generally requires." (Opposition, p.2). Instead, the Company argues, "most of what the Town seeks by way of its Motion is normally part of the local permitting process for a grant of location and is not addressed by the Siting Board at first instance under G.L. c. 164, § 69J." Essentially, therefore, the Company is arguing that the issues being raised by the Town should properly be resolved during a Grant of Location proceeding before the Needham Board of Selectmen.

Eversource's argument might be given more weight if it were not substantially undermined by the Company's own brief,⁴ where it states:

That is not to say that the Siting Board may not later have specific authority in this area, should the Town refuse to issue the Company a grant of location or do so only in a manner that is in conflict with the Siting Board's approval. See G.L. c. 164, §§ 69H-69O.

Opposition, p.5, n.2. Put another way, rather than allowing the Siting Board to consider project plans that have been worked out in advance with Town regulators, the Company wants the Town's requested revisions to be imposed as part of a Grant of Location, after which it will seek to have any conditions attached to the Grant of Location that it finds distasteful nullified in a future Siting Board proceeding.

But this would be a waste of Siting Board resources, requiring the Board to review and act on two separate sets of plans, doubling the time and resources it must devote to that task. A far more logical way to proceed is for the Company to revise its design plans for the proposed line, to the extent that it intends to in response to the Town's comments, and then to allow the Siting Board to review those plans only once.

Further, if the Siting Board is going to be asked to review the Town's requests to determine whether they are "in conflict with the Siting Board's approval," it would make far more sense to have that review occur now, before the Town holds its Grant of Location hearing. The Town has been as transparent as possible about the changes it believes to be needed in order for a Grant of Location to be issued. If, as the Company now states, some of those changes are "inconsistent with Siting Board standards and precedent" (Opposition, p.6), then the Town deserves to receive the guidance of the Siting Board before it proceeds. If, on the other hand, the Town is free to exercise its authority under *M.G.L. c.166, §22*,

⁴ It certainly does not help the Company's case that it deliberately misrepresented the state of completeness of the plans submitted to the Board.

without preemption or oversight from the Siting Board, that point should be made explicit in the Final Decision in this proceeding.


CONCLUSION

The Town has requested modifications to the design plans that it considers to be reasonable and prudent. Eversource has, for the most part, chosen not to acknowledge those requests or their materiality in this proceeding, and has misrepresented the completeness of its design plans to the Siting Board. It is the Town's position that, because the plans call for installation of the project in a manner that its Engineering Department does not believe to be feasible, modifications are required to the Company's design plans. Because such modifications will impact the cost of installation, they directly affect the question of whether the Siting Board's standards are being met, and are undeniably material to the Siting Board's review in this proceeding.

For the reasons set forth in the Town's Motion to Reopen and in this Response, the Town's Motion should be allowed to permit further discovery, witness examination and, as necessary, supplemental briefing.

Respectfully Submitted,

The Town of Needham,
By its attorneys,



J. Raymond Miyares, BBO #350120
Eric Reustle, BBO #681933
Miyares and Harrington LLP
40 Grove Street • Suite 190
Wellesley, MA 02482
t: (617) 489-1600
f: (617) 489-1630

Dated: January 24, 2018

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of NSTAR Electric Company d/b/a/
Eversource Energy for Approval to Construct
and Maintain a New 115-kV Combination
Overhead/Underground Transmission Line in
West Roxbury, Dedham and Needham
Pursuant to G.L. c. 164 § 69J

EFSB 16-02/D.P.U. 16-77

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing Town of Needham's Response to Opposition of NSTAR Electric Company d/b/a Eversource Energy to the Town's Motion to Reopen Hearing upon the Energy Facilities Siting Board and the Service List in the above-docketed proceeding in accordance with the requirements of 980 CMR 1.03.



Eric Reustle, BBO #681933
Miyares and Harrington LLP
40 Grove Street • Suite 190
Wellesley, MA 02482
t: (617) 489-1600
f: (617) 489-1630

Dated: January 24, 2018